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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JUAN GOMEZ-GARCIA,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 11-70016

Agency No. A091-591-412

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted November 19, 2013**

Before: CANBY, TROTT, and THOMAS, Circuit Judges.

Juan Gomez-Garcia, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals’ (“BIA”) order dismissing his appeal from an immigration judge’s removal order. We have jurisdiction under 8 U.S.C. § 1252. We review de novo questions of law. *Sandoval-Luna v. Mukasey*, 526 F.3d 1243,

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

1246 (9th Cir. 2008) (per curiam). We grant in part and deny in part the petition for review and remand.

In concluding that Gomez-Garcia was inadmissible under 8 U.S.C. § 1182(a)(9)(C)(i)(II), the BIA did not have the benefit of *Duran Gonzales v. DHS*, 712 F.3d 1271 (9th Cir. 2013) and *Carrillo de Palacios v. Holder*, 708 F.3d 1066 (9th Cir. 2013), in which the court set out the retroactivity test to be applied in such cases. *See Duran Gonzales*, 712 F.3d at 1275-78. We remand to the BIA to apply the retroactivity test in the first instance. *See id.* at 1278 (remanding for retroactivity analysis given the fact that the record has not been fully developed).

Gomez-Garcia's motion to hold his case in abeyance pending a decision in *Duran Gonzales v. DHS*, 659 F.3d 930 (9th Cir. 2011) is denied as moot. The parties shall bear their own costs for this petition for review.

PETITION FOR REVIEW GRANTED in part; DENIED in part; and REMANDED.